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7 Attorneys for Defendants Commonwealth of the Northern Mariana Islands,  
 Nicole C. Forelli, William C. Bush, D. Douglas Cotton, L. David Sosebee,  
 8 Andrew Clayton, and Pamela S. Brown

9  
 10 UNITED STATES DISTRICT COURT  
 11 FOR THE NORTHERN MARIANA ISLANDS

12 ROBERT D. BRADSHAW,	) CIVIL ACTION NO. 05-0027
	)
13 Plaintiff,	)
	)
14 vs.	)
	)
15 COMMONWEALTH OF THE NORTHERN	) <b>DEFENDANT DAVID SOSEBEE'S</b>
16 MARIANA ISLANDS, et al.,	) <b>RESPONSE TO PLAINTIFF'S RULE 60(b)</b>
	) <b>MOTION</b>
17 Defendants.	)

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 19 On October 13, 2006, this Court entered a "Notice of Order Denying Plaintiff's Motion for Costs  
 20 of Service Upon Defendant Sosebee." The Court expressly found as follows:

21 Defendant Sosebee contends that good cause exists [to deny plaintiff's motion]  
 22 because he never received plaintiff's request for a waiver of service. He declared that he  
 23 moved from his home in Bryan, Texas to his home in Austin, Texas on June 5, 2006. He  
 24 further declared that since his move, and despite having his mail forwarded to his new  
 25 address in Austin, Texas, he has not received any mail from plaintiff. Accordingly, because  
 Sosebee has shown good cause why he did not waive service, **THE COURT DENIES**  
 plaintiff's motion for costs of service under Rule 4(d) upon defendant Sosebee.

Plaintiff, seeking reconsideration under Fed.R.Civ.P. 60(b)(3), now contends that Sosebee's  
 declaration was fraudulent, and has submitted his own declaration and a declaration based upon one Charles

1 Stripe containing nothing but hearsay regarding conversations Stripe had with post office officials in Bryan,  
 2 Texas which, in their best light, prove only that Sosebee had a post office box that was active after June 20,  
 3 2006, but do not contradict Sosebee's declaration that he has not checked that mailbox since leaving Bryan  
 4 Texas on June 5, 2006. Bradshaw's and Stripe's declarations in no way contradict the facts sworn to under  
 5 penalty of perjury by Sosebee that – regardless of whatever speculation and conjecture plaintiff may imagine  
 6 or hypothecate – Sosebee simply never received any request for waiver of service. Whether that was due  
 7 to errors in the Bryan, Texas post office that may, or may not have failed to properly forward Sosebee's mail  
 8 from Bryan, Texas to Austin, Texas is a matter of as much conjecture as plaintiff offers in his declaration  
 9 alleging fraud on Sosebee's part. Regardless, plaintiff has produced no admissible proof or direct evidence  
 10 of any fraud which contradicts Sosebee's declaration.

11 Affidavits must be based on personal knowledge and must not contain  
 12 conclusions of law or ultimate facts. *See Kim v. United States*, 121 F.3d 1269,  
 1276-77 (9th Cir.1997) (rejecting affidavit no based on personal knowledge);  
 13 *A.L. Pickens Co., Inc. v. Youngstown Sheet & Tube Co.*, 650 F.2d 118, 121  
 14 (6th Cir.1981) (finding conclusions of law in affidavit were not entitled to  
 15 any weight). "When ultimate facts or conclusions appear in an affidavit  
 which also contains the proper subject of affidavit testimony, facts within the  
 personal knowledge of the affiant, the extraneous material should be  
 disregarded and only the facts considered." *A.L. Pickens*, 650 F.2d at 121.

16 *American Civil Liberties Union v. City of Las Vegas*, 13 F.Supp.2d 1064, 1071 (D.Nev. 1998).

17 Reconsideration under Rule 60(b), Fed.R.Civ.P., is appropriate "only upon a showing of (1) mistake,  
 18 surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud; (4) a void judgment; (5) a satisfied  
 19 or discharged judgment; or (6) 'extraordinary circumstances.' which would justify relief." *Fuller v. M.G.*  
 20 *Jewelry*, 950 F.2d 1437, 1442 (9th Cir.1991). Neither Bradshaw's declaration, nor that of Charles Stripe,  
 21 are based upon personal knowledge that Sosebee indeed *received* a request for waiver (as opposed to it  
 22 merely being delivered to a post office box which had not been checked since June 5, 2006); the declarations  
 23 otherwise contain nothing but conclusions based upon speculation and inferences without any factual  
 24 foundation. He has produced no evidence of fraud that would warrant relief under Rule 60(b)(3).  
 25

1 Finally, Bradshaw's Rule 60(b) motion merely reargues issues that the court had already considered  
2 and rejected, *see Am. Ironworks & Erectors, Inc. v. N. Am. Constr. Corp.*, 248 F.3d 892, 899 (9th Cir.2001),  
3 and that is not grounds for relief under Rule 60(b). *See School Dist. No. 1J, Multnomah County, Or. v.*  
4 *ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir.1993).

5 Bradshaw's Rule 60(b) motion for relief is due to be denied.

6 Respectfully submitted this 26<sup>th</sup> day of April, 2007.

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8 OFFICE OF THE ATTORNEY GENERAL  
9 MATTHEW T. GREGORY  
Attorney General

10 /s/ Robert M. Weinberg  
11 ROBERT M. WEINBERG  
12 Assistant Attorney General  
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**CERTIFICATE OF SERVICE**

Pursuant to Federal Rule of Civil Procedure 5(d), the undersigned declarant states as follows:

1. I am eighteen years of age or older, and I certify that I caused to be served the following documents to the last known address(es) listed below on the date(s) indicated.

2. As set forth below, this service was accomplished by personal delivery; U.S. Mail; deposit with Clerk of Court (in attorney box), cf. Fed. R. Civ. P. 5(b)(2)(D); or electronic service, see Local Rule 5.1.

Robert D. Bradshaw  
P. O. Box 473  
1530 W. Trout Creek Road  
Calder, ID 83808-0473

Plaintiff, pro se  
Tel: (208) 245-1691  
Fax: N/A

**Via U.S. Mail**

Mark B. Hanson, Esq. # F0261  
Macaranas Building, 1st Floor  
Beach Road, Garapan  
PMB 738, P. O. Box 10,000  
Saipan, MP 96950-8900

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Tel: (670) 233-8600  
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**Via Electronic Service**

Jay H. Sorensen, Esq. # F0127  
c/o Shanghai, China  
P. O. Box 9022  
Warren, MI 48090-9022

Defendant, pro se  
Tel: (86) 21-5083-8542  
E-mail: subpar@fastmail.cn

Fax: same

**Via E-Mail**

3. I declare under penalty of perjury that the foregoing is true and correct.

This \_\_\_\_ day of April, 2007.

/s/ Robert M. Weinberg  
ROBERT M. WEINBERG  
Assistant Attorney General